IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 6552 OF 2005

Shivaji Maruti Wadikar. ... Applicant.
Versus.
State of Maharashtra. ... Respondent.

Shri A.S.Khandeparkar i/by M/s.Khandeparkar & Associates for the Applicant.

Shri A.S.Gadkari, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 10th October, 2005.

P.C.:

1. Heard the learned Advocate appearing for the Applicant and the learned A.P.P. for the State.

2. The learned Advocate for the Applicant submitted that even the F.I.R. discloses that the deceased was drunk and was having a fight with his father. He pointed out that the allegation of the prosecution is that when the deceased was fighting with his father, the Applicant, who is the real brother of the deceased, assaulted the deceased on his neck by a knife used in the kitchen. He submitted that after filing of the charge-sheet, the custody of the Applicant cannot be continued.

3. The learned A.P.P. opposed the Application by pointing out the material on record and submitted that

considering the prima-facie material against the Applicant, no case is made out for enlarging the Applicant on bail. He, however, on instructions stated that there are no criminal antecedents of the Applicant.

4. I have considered the application. The F.I.R. itself discloses that the deceased was completely drunk at the time of incident. When he came to his house, the clothes on his person were very dirty and therefore, the Applicant advised him to take bath. Instead of taking bath, the deceased started fighting with his father. The case of the prosecution is that the Applicant intervened for helping the father and assaulted the deceased by the knife used in the kitchen. Even according to the prosecution, the Applicant was working in the kitchen by using the knife at the time when the fight between the deceased and the father took place.

5. It is obvious that prima-facie there cannot be any intention on the part of the Applicant to kill the deceased. Admittedly there are no criminal antecedents of the Applicant. Considering the peculiar facts of the case which are found in the F.I.R., a case is made out for enlarging the Applicant on bail.

6. Hence the following order is passed:

(i) The Applicant shall be enlarged on bail

in connection with C.R.No.23 of 2005 registered with Sawantwadi Police Station, subject to furnishing a personal bond of Rs.10,000/- with one or two sureties of like amount.

(ii) The bail is granted subject to the condition that till conclusion of trial, the Applicant will report to the concerned Police Station once in a week.

(iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iv) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

(v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vi) Application is disposed of in above terms.

(vii) The parties to act upon an authenticated copy of this order.

Judge.